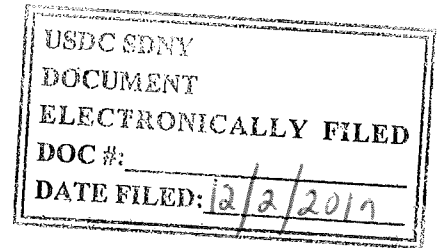


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
TOM SABATANO and DANIEL :
BARZOLOSKI, individually and on behalf of :
all others similarly situated, :
Plaintiffs, :
:

v. :

IOVATE HEALTH SCIENCES U.S.A. INC. :
a/k/a MUSCLETECH :
Defendant. :
-----X

ORDER

19 CV 8924 (VB)

On November 27, 2019, defendant moved to dismiss the amended complaint. (Doc. #15).

Accordingly, it is hereby ORDERED that, by no later than December 9, 2019, plaintiffs must notify the Court by letter whether (i) they intend to file a second amended complaint in response to the motion to dismiss, or (ii) they will rely on the complaint that is the subject of the motion to dismiss.

If plaintiffs elect not to file a second amended complaint, the motion will proceed in the regular course, and the Court is unlikely to grant plaintiffs a further opportunity to amend to address the purported deficiencies made apparent by the fully briefed arguments in defendants' motion. See Loreley Fin. (Jersey) No. 3 Ltd. v. Wells Fargo Sec., LLC, 797 F.3d 160, 190 (2d Cir. 2015) (leaving "unaltered the grounds on which denial of leave to amend has long been held proper, such as undue delay, bad faith, dilatory motive, and futility"); accord F5 Capital v. Pappas, 856 F.3d 61, 89–90 (2d Cir. 2017). The time to file opposing and reply papers shall be governed by the Federal Rules of Civil Procedure and the Local Civil Rules, unless otherwise ordered by the Court.

If plaintiffs elect to file a second amended complaint, they must file the second amended complaint by no later than 14 days after notifying the Court of their intent to do so. Within 21 days of such amendment, defendants may either (i) file an answer to the second amended complaint, (ii) file a motion to dismiss the second amended complaint, or (iii) notify the Court by letter that they are relying on the initially filed motion to dismiss.

Dated: December 2, 2019
White Plains, NY

SO ORDERED:

A handwritten signature in black ink, appearing to read "Vincent L. Briccetti".

Vincent L. Briccetti
United States District Judge